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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANCISCA MORALEZ,

PLAINTIFF,

v.

JP Morgan Chase & Company dba JP
Morgan Chase Bank, N.A., Antioch
Hillcrest Branch, 749865

DEFENDANTS.

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF: DENIAL OF
DISABLED ACCESS TO PUBLIC
FACILITIES; TITLE III OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990; VIOLATIONS OF
THE UNRUH CIVIL RIGHTS ACT
CAL CIV. CODE § 51, et seq.,
THE CALIFORNIA DISABLED
PERSONS ACT CAL CIV. CODE §
54, et seq.**

DEMAND FOR JURY TRIAL

I. SUMMARY

1. This is a civil rights action by PLAINTIFF, Francisca Moralez (Hereinafter "PLAINTIFF"), for discrimination at the building, structure, property and land known as: JP Morgan Chase Bank, 3457 Deer Valley Road, Antioch, CA 94531.

1 2. PLAINTIFF seeks damages, injunctive and declaratory relief,
2 attorney fees and costs against the DEFENDANTS pursuant to the
3 American with Disabilities Act of 1990, 42 U.S.C §12101 et seq.
4 (Hereinafter "ADA") and violations of the California Unruh Civil
5 Rights Act, California Civil Code section 51 et seq., and the
6 California Disabled Person's Act. (California Civil Code section
7 54 et seq.)
8

9 10 **II. JURISDICTION**

11 3. The United States District Court, Northern District of
12 California, has original federal question jurisdiction of the
13 action pursuant to 28 U.S.C. §1331 for violations of the ADA, 42
14 U.S.C. §12101 et seq. The Court also has supplemental jurisdiction
15 over all state law claims pursuant to 28 U.S.C. § 1367, because the
16 state law claims arise out of the same case or controversy.
17
18

19 20 **III. VENUE**

21 4. All actions complained of herein take place within the
22 jurisdiction of the United States District Court, Northern District
23 of California, and venue is invoked pursuant to 28 U.S.C. §1391(b),
24 (c). Additionally, the real property that is the subject of this
25 action is located in the United States District Court, Northern
26 District of California.
27
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IV. INTRADISTRICT

5. This civil case should be assigned to the Oakland intra-district because the civil rights violations occurred in, and PLAINTIFF'S rights arose in, the Oakland intra-district. PLAINTIFF will stipulate to a Voluntary Dispute Resolution Program. PLAINTIFF consents to an early Settlement Conference.

V. PARTIES

6. DEFENDANT JP Morgan Chase Bank located at 3457 Deer Valley Road, Antioch, CA provides full banking services to the public.

7. PLAINTIFF is an American with severe physical impairments and is a "person with a disability" and a "physically handicapped person" pursuant to the rules and regulations of the ADA, 42 U.S.C §12102 (2) (A); 28 C.F.R §36.104, and related California statutes including California Civil Code §51, et seq., and §54, et seq. PLAINTIFF suffers from rheumatoid arthritis and needs the assistance of a wheelchair for assistance in her daily life activities. PLAINTIFF cannot walk without the assistance from her motorized wheelchair. She can, however, drive a motor vehicle and when she does, she brings her motorized wheelchair with her to assist with her mobility.

VI. GENERAL ALLEGATIONS

1 8. DEFENDANT is a "public accommodation" as defined by 42 U.S.C
2 §12181(7); 28 C.F.R. §36.104 and subject to the requirements of
3 California Civil Code §51 and §52 since it is a business open to
4 the public. DEFENDANT is open to the public whose sole purpose is
5 intended for nonresidential commercial use and whose operation
6 affects interstate commerce.
7

8 9. Plaintiff began using this bank as early as January 2013 and
9 continues to use the bank to maintain her checking and savings
10 accounts. She has held accounts with this bank when it was known
11 formerly as Washington Mutual and has done so for many years.
12 Plaintiff has continuously used banking services at this branch for
13 approximately four (4) years. From the first day she entered the
14 bank, she had difficulty conducting her transactions with the
15 tellers as the service counters and P.O.S. devices are high and she
16 cannot see the display on the P.O.S. and has difficulty reading the
17 prompts to enter the appropriate information. She needs assistance
18 and this is unnecessarily embarrassing. Her visits are numerous as
19 this is where she banks. Such visits have been on and off but
20 usually on a monthly if not more often basis. Such dates include
21 but are not limited to the following dates: 4/21/15, 5/7/15,
22 10/27/15, 2/8/16, 10/29/16, 11/25/16, & 12/22/16. On these dates
23 Plaintiff had difficulty maneuvering through the entrance doors
24 into the bank as the doors are difficult to open and they also hit
25 the plaintiff before she can pass through the doors. Plaintiff
26
27
28

1 also has difficulty maneuvering over the threshold of the doors.
2 The table by the interior ATM machine is difficult for the
3 Plaintiff to use as it is high and lacks sufficient space for her
4 to use writing and appropriate leg clearance. She had difficulty
5 conducting her transactions with the tellers as the service
6 counters and P.O.S. devices are high and she cannot see the display
7 on the P.O.S. and has difficulty reading the prompts to enter the
8 appropriate information. This causes Plaintiff pain in her
9 shoulders, arms and neck, and strains her vision. Plaintiff has
10 had numerous conversations through out the years with various JP
11 Morgan Chase employees & managers but nothing has changed.
12

13
14 15. On every date mentioned in this complaint, PLAINTIFF
15 encountered physical barriers that interfered with, if not outright
16 denied, PLAINTIFF'S ability to use and enjoy the goods, services,
17 privileges and accommodations offered at DEFENDANT.
18

19 16. PLAINTIFF personally encountered this physical barrier in the
20 DEFENDANT'S location on each of her visits.

21 17. PLAINTIFF seeks injunctive relief to require DEFENDANT to
22 remove all architectural barriers related to her disabilities and
23 to comply with the ADA and Americans with Disabilities Act
24 Accessibility Guidelines (hereinafter "ADAAG") contained in 28 CFR
25 Part 36.
26

27 18. PLAINTIFF is deterred and forgoes visits to DEFENDANT
28 based upon personal knowledge of existing barriers. PLAINTIFF

1 understands she is not required to engage in the "futile gesture"
2 of actually returning to the inaccessible place of public
3 accommodation, however, PLAINTIFF wishes to return to DEFENDANT
4 once the physical barriers are eliminated.

5
6 **VII. FIRST CLAIM**
7 **VIOLATION OF TITLE III OF THE ADA**
8

9 19. PLAINTIFF hereby incorporates and re-alleges, as if fully set
10 forth herein, each and every allegation contained in paragraphs 1
11 through 18.

12 20. Title III of the ADA, and the regulations promulgated
13 thereunder, require that after January 26, 1992, all new
14 construction and alterations of facilities for the use of the
15 public be designed and constructed in such a manner that the public
16 accommodation is readily accessible to, and usable by, individuals
17 with disabilities.
18

19 21. DEFENDANT discriminated, and each of them, against PLAINTIFF
20 on the basis of PLAINTIFF'S disabilities and denied PLAINTIFF the
21 opportunity to participate in, or benefit from, the goods,
22 services, facilities, privileges, advantages or accommodations, in
23 violation of 42 U.S.C. §12182(a), 42 U.S.C. §12182(b)(1)(A)(I).
24

25 22. Moreover, DEFENDANT'S conduct denied PLAINTIFF, on the sole
26 basis of PLAINTIFF'S disabilities, the opportunity to participate
27 in, or benefit from, a good, service, privilege, advantage or
28

1 accommodation that was equal to that afforded to other individuals
2 in violation of 42 U.S.C. §12181(b)(1)(A)(ii).

3 23. Furthermore, DEFENDANT failed to provide PLAINTIFF with it's
4 goods, services, facilities, privileges, advantages and
5 accommodations in the most integrated setting appropriate to a
6 disabled person's, including PLAINTIFF'S, individual needs in
7 violation of 42 U.S.C. §12182(b)(1)(B). The barriers identified
8 above are only those that Plaintiff personally encountered.
9

10 Plaintiff is presently unaware of other barriers that may in fact
11 exist at the facility and relate to her disabilities. Plaintiff
12 will seek to amend this Complaint once such additional barriers are
13 identified as it is Plaintiff's intentions to have all barriers
14 that exist at the facility and relate to her disabilities removed
15 to afford her full and equal access. Defendants knew, or should
16 have known, that these elements and areas of the facility were
17 inaccessible and violate federal and state law. Moreover,
18 Defendants have the financial resources to remove these barriers
19 from the premises without much difficulty and expense and make the
20 facility accessible to the physically disabled. Thus, Defendants
21 violated the ADA by failing to identified barriers when it was
22 readily achievable to do so. In the alternative, if it was not
23 "readily achievable" to do so then the defendants violated the ADA
24 by failing to make the required services available through
25 alternative methods, which are achievable.
26
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1 24. **INJUNCTIVE RELIEF:** PLAINTIFF seeks injunctive relief to
2 prohibit the acts and omissions of DEFENDANT as complained of
3 herein which have the effect of wrongfully discriminating against
4 PLAINTIFF and other members of the public who are physically
5 disabled from full and equal access to these public facilities.
6 Such acts and omissions were the cause of humiliation and physical,
7 mental, and emotional suffering of the PLAINTIFF in that these
8 actions treated PLAINTIFF as an inferior and second-class citizen
9 and served to discriminate against her on the sole basis that
10 PLAINTIFF is, and at all times mentioned in this complaint was, a
11 person with disabilities. PLAINTIFF is currently deterred from
12 patronizing DEFENDANT and will be unable to achieve equal access to
13 services and facilities at the public accommodation so long as such
14 acts and omissions of DEFENDANT continues. The acts of DEFENDANT
15 proximately caused irreparable injury to PLAINTIFF and will
16 continue to cause irreparable injury to PLAINTIFF and to other
17 disabled persons if not enjoined by this District Court.

21 25. As of the date of the filing of this complaint, DEFENDANT
22 continues to be in violation of state and federal ADA law in that
23 the complained of property and businesses are, and continue to be,
24 generally inaccessible for use by physically disabled persons such
25 as PLAINTIFF. PLAINTIFF requests that an injunction be ordered
26 requiring that the DEFENDANT take prompt action to modify the
27 aforementioned policies and public facilities to render them
28

1 accessible to and usable by PLAINTIFF, and thereby make DEFENDANT'S
2 services available to and usable by physically disabled persons,
3 including PLAINTIFF.

4 26. Wherefore, PLAINTIFF prays the District Court grant relief as
5 requested below.
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9 **VIII. SECOND CLAIM**

10 **VIOLATIONS OF CALIFORNIA CIVIL CODE §§ 51, et seq.**

11 27. PLAINTIFF hereby incorporates and re-alleges, as if fully set
12 forth herein, each and every allegation contained in paragraphs 1
13 through 26.
14

15 28. California's Civil Code §51(b) requires that individuals with
16 disabilities have "full and equal accommodations, advantages,
17 facilities, privileges or services in all establishments of every
18 kind whatsoever." DEFENDANT, and at all times mentioned in this
19 complaint was, violating the California Civil Code §51 through
20 DEFENDANT'S failure to remove architectural and accessibility
21 barriers to the public accommodations and also through the
22 disparate treatment of the PLAINTIFF.
23
24

25 29. DEFENDANT, complained of herein, located at 3457 Deer Valley
26 Road, Antioch, CA 94531, is, and at all time mentioned in this
27 complaint was, a "public accommodations" pursuant to the ADA and
28 the California Civil Code.

1 30. PLAINTIFF encountered accessibility barriers and was also
2 subjected to disparate treatment while she patronized DEFENDANT'S
3 public accommodations.

4 31. DEFENDANT has, and at all times mentioned in this complaint
5 had, architectural and accessibility barriers that limited access
6 for disabled individuals, including PLAINTIFF. The accessibility
7 denied PLAINTIFF, and other disabled persons to the equal access at
8 DEFENDANT and its accommodations, advantages, facilities,
9 privileges, and services resulted in discrimination against
10 PLAINTIFF on the sole basis of PLAINTIFF'S disabilities.
11 DEFENDANT'S violations are ongoing.
12

13 32. DEFENDANT'S actions constitute intentional discrimination on
14 the basis of PLAINTIFF'S disabilities in violation of the
15 California Civil Code §51 in that: 1.) DEFENDANT owned, operated
16 and maintained public accommodations with customer service counters
17 that were not ADA compliant and were inaccessible to disabled
18 persons, and PLAINTIFF in particular; 2.) DEFENDANTS knowingly
19 failed to remove architectural and access barriers even though they
20 were put on notice by PLAINTIFF of the accessibility barriers many
21 times; 3.) DEFENDANT subjected PLAINTIFF to disparate treatment
22 when PLAINTIFF was treated differently from other members of the
23 public due to PLAINTIFF'S disabilities.
24

25 33. California Civil Code §52 provides that the discrimination by
26 DEFENDANT against PLAINTIFF on the basis of PLAINTIFF'S disability
27
28

1 constitutes a violation of the general anti-discrimination
2 provisions of California Civil Code §51 and §52.

3 34. DEFENDANT'S discrimination constitutes a separate and distinct
4 violation of California Civil Code §52, which provides that:

5 "Whoever denies, aids or incites a denial, or makes any
6 discrimination or distinction contrary to California Civil Code
7 §51, §51.5, or §51.6 is liable for each and every offense for the
8 actual damages, and any amount that may be determined by a jury, or
9 a court sitting without a jury, up to a maximum of three times the
10 amount of actual damage but in no case less than four thousand
11 dollars (\$4,000), and any attorney's fees that may be determined by
12 the court in addition thereto, suffered by any person denied the
13 rights provided in §51, §51.5, or §51.6."

14 35. DEFENDANT knowingly violated California Civil Code §51
15 intentionally and/or with deliberate indifference to the likelihood
16 that they were violating the rights of disabled people. In
17 addition, DEFENDANT'S violations were so intuitive or obvious that
18 noncompliance could not be other than intentional. In addition,
19 PLAINTIFF put DEFENDANT on notice of the physical barriers many
20 times over the last year.

21 36. The acts and omissions of DEFENDANT, as herein alleged,
22 constitute a denial of access to, and use of, the described public
23 facilities by physically disabled persons within the meaning of
24 California Civil Code §51 and §52. As a proximate result of
25
26
27
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1 DEFENDANT'S acts and omissions, DEFENDANT discriminated against
2 PLAINTIFF in violation of California Civil Code §51 and §52.

3 37. Any violation of the ADA also constitutes a violation of
4 California Civil Code §51(f), thus independently justifying an
5 award of damages and injunctive relief pursuant to California law.
6 Per California Civil Code §51(f), "(A) violation of the right of
7 any individual under the ADA (Public Law 101-336) shall also
8 constitute a violation of this section."
9

10 38. Wherefore, PLAINTIFF prays the District Court grant relief as
11 requested below
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13
14 **IX. THIRD CLAIM**

15 **VIOLATIONS OF CALIFORNIA CIVIL CODE § 54, et seq. - THE CALIFORNIA**
16 **DISABLED PERSONS ACT**

17
18 39. PLAINTIFF hereby incorporates and re-alleges, as if fully set
19 forth herein, each and every allegation contained in paragraphs 1
20 through 38.

21 40. The California Disabled Persons Act, California Civil Code
22 §§54 and 54.1, (Hereinafter "CDPA"), guarantees people with
23 disabilities full and free use of all public places and full and
24 equal access to all places to which the public is invited.
25

26 41. DEFENDANT is, and at all times mentioned in this complaint
27 was, violating the rights of disabled persons, and violated the
28

1 rights of PLAINTIFF, by denying her equal access to a public place
2 through architectural barriers and disparate treatment.

3 42. DEFENDANT owns, operates, controls and/or leases a "public
4 place" within the meaning of the CDPA. By failing to remove
5 architectural barriers or to provide reasonable accommodations to
6 the PLAINTIFF, DEFENDANT violated PLAINTIFF'S rights under the
7 CDPA.
8

9 43. The actions of the DEFENDANT are, and at all times mentioned
10 in this complaint were, in violation of the CDPA.

11 44. PLAINTIFF is entitled to damages for each offense, and to
12 declaratory relief under California Civil Code §54.3.

13 45. PLAINTIFF is also entitled to reasonable attorneys' fees and
14 costs under the CDPA.
15

16 46. Wherefore, PLAINTIFF prays the District Court grant relief as
17 requested below.
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19
20 **X. PRAYER**

21 WHEREFORE, PLAINTIFF prays the following:

22 1. Issue a preliminary and permanent injunction directing the
23 DEFENDANT to modify it's facilities and policies as required by law
24 to comply with the ADA and ADA regulations, including the ADAAG
25 where required; institute policy to enable PLAINTIFF to use goods
26 and services offered to the non-disabled public so that DEFENDANT
27 provides adequate access to all citizens, including persons with
28

1 disabilities; issue a preliminary and permanent injunction
2 directing DEFENDANT to maintain it's facilities usable by PLAINTIFF
3 and similarly situated person with disabilities in compliance with
4 federal regulations, and which provide full and equal access, as
5 required by law;

6 2. Retain jurisdiction over the DEFENDANT until such time as the
7 District Court is satisfied that DEFENDANT'S unlawful policies,
8 practices, acts and omissions, and maintenance of inaccessible
9 public facilities as complained of herein no longer occur, and will
10 not recur;

11 3. Award to PLAINTIFF all appropriate damages, including, but not
12 limited to, statutory damages and general damages in an amount
13 within the jurisdiction of the District Court, according to proof;

14 4. Award PLAINTIFF all litigation expenses and costs of this
15 proceeding, including all reasonable attorney fees as provided by
16 law; and

17 5. Grant such other and further relief as this District Court may
18 deem just and proper.

19 Date: _____.

20 _____
21 /s/ Russell S. Humphrey
22 By: Russell S. Humphrey
23 Attorney for PLAINTIFF
24 Francisca Moralez
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DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury pursuant to FRCP 38(b) on all
issues of law raised in the complaint.

Date: _____.

/s/ Russell S. Humphrey
By: Russell S. Humphrey
Attorney for PLAINTIFF
Francisca Morales